Dining and Kitchen Administration, d/b/a DAKA *and* District 1199, National Union of Hospital and Health Care Employees, a/w Retail, Wholesale, Department Store Union, AFL-CIO

International House *and* District 1199, National Union of Hospital and Health Care Employees, a/w Retail, Wholesale, Department Store Union, AFL-CIO. Cases 2-CA-16685 and 2-CA-16691

July 29, 1981

DECISION AND ORDER

On February 18, 1981, Administrative Law Judge James F. Morton issued the attached Decision in this proceeding. Thereafter, Respondent International House filed exceptions and a supporting brief, and the General Counsel filed an answering brief.

The Board has considered the record and the attached Decision in light of the exceptions and briefs and has decided to affirm the rulings, findings[1] and conclusions[2] of the Administrative Law Judge and to adopt his recommended Order.[3]

ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board adopts as its Order the recommended Order of the Administrative Law Judge and hereby orders that the Respondents, Dining and Kitchen Administration, d/b/a DAKA, and International House, New York, New York, their officers, agents, successors, and assigns, shall take the action set forth in the said recommended Order, except the attached notice, Appendix A, is substituted for that of the Administrative Law Judge.

[1] Respondent International House has excepted to certain credibility findings made by the Administrative Law Judge. It is the Board's established policy not to overrule an administrative law judge's resolutions with respect to credibility unless the clear preponderance of all of the relevant evidence convinces us that the resolutions are incorrect. *Standard Dry Wall Products, Inc.*, 91 NLRB 544 (1950), enfd. 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing his findings.

[2] In the absence of exceptions we adopt *pro forma* the Administrative Law Judge's conclusion that Respondent International House had no duty to bargain over its decision to terminate its contract with DAKA.

Chairman Fanning, who dissented in *L. E. Davis, d/b/a Holiday Inn of Benton*, 237 NLRB 1042 (1978), finds that case distinguishable on its facts from the situation herein.

[3] We have modified the Administrative Law Judge's notice, Appendix A, to conform with his recommended Order.

APPENDIX A

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

After a hearing at which all sides had an opportunity to present evidence and state their positions, the National Labor Relations Board found that we have violated the National Labor Relations Act, as amended, and has ordered us to post this notice.

The Act gives employees the following rights:

To engage in self-organization
To form, join, or assist any union
To bargain collectively through representatives of their own choice
To engage in activities together for the purpose of collective bargaining or other mutual aid or protection
To refrain from the exercise of any or all such activities.

WE WILL NOT cancel any contract with any firm engaged to operate our cafeteria in order to terminate the employment of the individuals, including residents of International House, employed as full-time or regular part-time employees there or otherwise discharge any of our employees because they selected a union to represent them or to compel a union to forgo representing residents who are also employees.

WE WILL NOT refuse to bargain collectively with District 1199, National Union of Hospital and Health Care Employees, a/w Retail, Wholesale, Department Store Union, AFL-CIO, as the exclusive representative of our employees, including residents of International House, employed on a full-time or regular part-time basis as kitchen or dining room employees in our cafeteria.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce employees in ithe exercise of the rights guaranteed them under the Act.

WE WILL offer full and immediate reinstatement to all full-time and regular part-time employees employed as dining room and kitchen employees at International House on or about August 23, 1979, to their former jobs or, if those jobs no longer exist, to substantially equivalent positions without prejudice to their seniority and other rights and privileges previously enjoyed, discharging, if necessary, employees hired as their replacements, and WE

WILL make them whole for any loss of earnings they may have suffered as a result of the discrimination practiced against them, plus interest.

WE WILL, upon request, bargain with the above Union as the exclusive representative of all the employees in the above unit concerning their terms and conditions of employment and, if an understanding is reached, embody it in a signed contract if asked to do so.

WE WILL, upon request of the above Union, cancel any changes from the rates of pay and benefits that existed immediately before our takeover of the cafeteria from DAKA and make the employees in the above unit whole by remitting all wages and benefits that would have been paid absent such changes from August 23, 1979, until we negotiate in good faith with the Union to agreement or to impasse.

INTERNATIONAL HOUSE

DECISION

STATEMENT OF THE CASE

JAMES F. MORTON, Administrative Law Judge: On August 27, 1979 (all dates hereafter refer to 1979, unless noted otherwise), District 1199, National Union of Hospital and Health Care Employees, a/w Retail, Wholesale, Department Store Union, AFL-CIO (herein called the Union), filed the unfair labor practice charge in Case 2-CA-16685 against Dining and Kitchen Administration, d/b/a DAKA (herein called DAKA). On August 28, the Union filed the unfair labor practice charge in Case 2-CA-16691 against International House (herein called IH). Those unfair labor practice charges, as later amended, alleged that DAKA and IH each violated Section 8(a)(1), (3), and (5) of the National Labor Relations Act, as amended. An order consolidating the two cases issued on March 28, 1980, at which time a consolidated complaint also issued against DAKA and IH. That complaint was further amended at the hearing, held on September 2, 19, and 22, 1980. The respective answers, as amended at the hearing, to the amended consolidated complaint placed in issue the following matters:

1. Whether graduate students who reside at IH,[1] while attending universities in New York City, are employees as defined in the Act when they work on a part-time basis in the cafeteria at IH managed by DAKA.

2. Whether IH and DAKA were the joint employer of the employees who worked in the cafeteria at IH.

3. Whether IH terminated DAKA's contract to manage that cafeteria because the employees there had selected the Union as their collective-bargaining representative.

4. Whether DAKA and IH refused to bargain collectively with the Union by refusing to discuss the terms and conditions of employment of IH residents who worked in the cafeteria there under DAKA's management.

5. Whether IH and DAKA each unlawfully failed to execute a collective-bargaining agreement with the Union covering the employees employed at the IH cafeteria.

6. If IH had an obligation to bargain collectively with the Union as the representative of the cafeteria employees at IH, did IH unlawfully fail to give the Union an opportunity to bargain as to IH's decision to terminate DAKA's contract to manage that cafeteria.

Upon the entire record, including my observation of the demeanor of the witnesses, and after full consideration of the briefs filed by counsel for the General Counsel and by counsel for IH, I make the following:

FINDINGS OF FACT

I. JURISDICTION AND LABOR ORGANIZATION

The pleadings and related stipulations received at the hearing establish, and I thus find, that DAKA and IH are employers engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act, and that the Union is a labor organization as defined in Section 2(5) of the Act.

II. THE ALLEGED UNFAIR LABOR PRACTICES

A. *Summary of the Relevant Testimony and Exhibits*

1. DAKA's operations

DAKA is a Massachusetts corporation which provides food services for about 160 locations. It has a contract with the Union covering its employees working in the cafeteria at the Teacher's College in New York City, and apparently another contract for employees employed by DAKA in the cafeteria at the University of Bridgeport. In 1974, DAKA took over the operation of the cafeteria at IH from one of its competitors. The cafeteria employees at that location were unorganized and remained unorganized until the Union became their certified representative, in 1978, as discussed in more detail in a separate section, *infra.*

2. IH's operations

IH was established in 1924 as a residence for 500 students from around the world who attend graduate schools in New York City. It is a nonprofit organization dedicated to promoting international communications and understanding, and is governed by a board of trustees. Its president, Thomas F. Olson, is responsible for implementing its policies. The interests of the residents are represented by student trustees and a student council. IH has 500 single rooms, music practicing rooms, a language laboratory, a study room, a cafeteria, a game room, a counseling service, a work placement service, a periodical lending service, a theater ticket service, laundry facilities, a pub, and other facilities it deems necessary in

[1] As is apparent, IH here refers to the residence hall itself and not to Respondent IH as a corporate entity. Similar uses of the letters IH appear throughout this Decision.

making IH, in the language of its handbook for residents, a valuable international learning experience. About 30 percent of the residents are U.S. citizens; 70 percent are from foreign lands, who are in this country under student visas.

IH has a selective admissions policy; its admissions committee attempts to fill its rooms with "resident members from different countries, diverse cultural backgrounds and varied fields of study . . . (who) are willing to share their time and talents to promote the goals" of IH.

Each resident has a single room. The room rate varies according to its location and other factors. IH sponsors a work aid program, whereby residents can perform work through the building to earn credits to offset the costs of the room rate and the food plan. Such credits cannot exceed in value the total of the room rate and food plan costs. Olson, the president of IH, testified that, if IH permitted a student to work excess credit hours, it would have to compensate that student therefor by paying him the equivalent in money. That process would also require a foreign student to obtain a work authorization permit from the U.S. Immigration and Naturalization Service. Presumably, IH would have to deduct from the excess earnings of its residents the applicable income and other tax deductions, and remit those deducted amounts to the appropriate tax authorities.

The rate at which a resident accumulates credits is set by IH. For residents who work in the cafeteria, the rate applicable as of May 1979 was $2.65 hourly.

Cafeteria prices are subsidized. As a result, the residents pay only half cost for food and beverage.

IH has a collective-bargaining agreement with another labor organization, National Organization of Industrial Trade Unions, which represents, *inter alia*, housekeepers. Residents of IH who perform the same type of work covered by that contract are expressly excluded from the unit described therein.

3. DAKA's relationship to IH

As noted above, DAKA took over the management of the cafeteria at IH when it contracted with IH in 1974 to do so. As of the academic year 1978–79, DAKA had an agreement with IH to operate the cafeteria essentially at cost, plus a management fee of 3 percent of gross sales. IH, of course, furnished the equipment and provided related services—heating, lighting, and so on. The menus, hours, service, and food service schedules were mutually agreed upon by DAKA and IH. DAKA also submitted to IH, prior to the start of the 1978–79 academic year, a proposed budget covering its projected labor costs, which IH underwrote. IH approved that budget. Under it, IH agreed to pay any labor costs incurred by DAKA in excess of that budget, provided that DAKA could justify the excess.

DAKA's corporate policy is to keep its clients fully informed of all significant developments. Before it hired the individual who managed the IH cafeteria in 1978–79, DAKA sent him and two other individuals to IH for interviews with its then executive vice president, Olson. Olson had no objection to DAKA's selecting any one of them.

DAKA's manager and his assistants, in operating the IH cafeteria in 1978–79, hired all employees, supervised them, supplied the food and beverages, and otherwise managed the cafeteria operations on a day-to-day basis. Whenever there was a job vacancy, DAKA's manager checked first with IH to find out whether IH wanted the vacancy filled by a resident or a nonresident. IH maintained a job referral service for its residents whereby they could be sent to, *inter alia*, the DAKA cafeteria manager for job interviews. In 1978–79, DAKA had about 10 full-time employees and 2 regular part-time employees on its payroll; those so employed were not residents of IH. In addition, DAKA had hired about 12 residents of IH. The residents performed the same work as did the nonresidents. Thus, residents and nonresidents both performed the duties encompassed within the jobs classified by DAKA as general utility workers and as food service workers II. Only the nonresidents were on DAKA's payroll. The residents were not given any fringe benefits, while the nonresidents were covered by DAKA for life insurance and medical insurance, and were given vacations, holidays, and other benefits. The only record DAKA kept as to the work performed by the residents of IH was a weekly accounting of the hours they each worked. That record was turned over weekly to IH so that IH could give those residents appropriate credits toward their room and board.

DAKA maintained personnel files only for nonresidents. It alone made the decision to discharge any nonresident. The termination of a resident's employment status in the cafeteria required agreement between DAKA and IH. In practice, this usually meant that IH notified DAKA that a particular resident had reached the maximum allowable credit and, on that basis, DAKA discharged him.

The parties adduced considerable evidence as to the accounting methods pertaining to the hours worked by the residents of IH. In essence, IH applied an hourly rate to the work done by the residents, as reported by DAKA, and sent DAKA a monthly invoice for the total value of such work. The sum as shown on that invoice was deducted from the amount to be paid DAKA by IH under the labor budget for each respective month. IH paid DAKA the balance due.

From outward appearances in 1978–79, there was no way a first time visitor to the IH cafeteria could tell that the cafeteria was being operated by someone other than IH. DAKA's name was not publicized. It did appear on the usual workmen's compensation notices and the like but those were not readily seen by a visitor.

4. The representation case

On September 6, 1978, the Union filed a petition with the Regional Office of the Board for an election among the "service and maintenance employees" employed by DAKA at the IH cafeteria. The Union's estimate of the size of that unit was 10 employees. It did not name IH in that petition.

The petition was docketed as Case 2–RC–18100. On September 11, 1978, a notice of hearing issued in that case and a copy of it was served on DAKA. An order

issued rescheduling the hearing 3 days later; a copy of that order, together with a copy of the petition, was served by registered mail on IH that same day. On September 20, 1978, the hearing in that case opened. No one entered an appearance on the record for IH. A lawyer from Australia who was with a New York law firm, apparently on a visiting basis, attended that hearing as an observer for IH. On the second day of that hearing, that lawyer entered an appearance for IH on the record, but did not otherwise participate in the hearing. IH's president, Olson, came to the second day of the hearing.

DAKA contended in that proceeding, *inter alia*, that the approximately 12 residents of IH who were working under DAKA's supervision at the IH cafeteria should be included in any unit found appropriate. The Union sought to exclude those residents from the unit on the ground that they lacked a sufficient community of interest with the nonresident employees of DAKA, particularly as the nonresidents were on DAKA's payroll and received numerous fringe benefits and as the residents were not on DAKA's payroll and enjoyed no fringe benefits. The record in the instant case contains testimony respecting the reason DAKA had sought then to include the IH residents in the unit of cafeteria employees.

DAKA's vice president of personnel, Allen Maxwell, testified that the position advocated then by DAKA was taken with the "blessing" of IH's president, Olson. Maxwell could not recall the specifics of his conversations with Olson respecting that subject but, in substance, he and Olson were of the view that the inclusion of the residents in the unit in Case 2-RC-18100 would help DAKA "win the election." Olson did not participate in the discussions among DAKA's attorneys, the Union's representative, and the Board agent respecting the different unit positions. Olson did not testify at that hearing. He did testify in the instant case. His testimony was that he had come to the representation case hearing in 1978 at the request of either DAKA or the Board agent and that he sat in the back of a room while the Union and DAKA argued about which individuals should be permitted to vote in an election. Olson testified that DAKA "had proposed to include the students in the unit" as DAKA thought that the students (i.e.—the residents at IH who worked in the cafeteria then) "would support" DAKA's position. Olson testified that DAKA's vice president asked him then what he thought about that strategy and that he, Olson, responded that the strategy "sounds pretty clever . . . [and that] the students would vote against the Union."[2]

The transcript of the representation case discloses that a great deal of testimony had been taken as to the issue of the unit placement of the residents and also as to the alleged supervisory status of a nonresident. During the second day of that hearing, DAKA and the Union reached an agreement to hold an election at which approximately 22 individuals, including about 10 residents would vote. DAKA and the Union signed an agreement for consent election, which provided for an election to be held on October 26, 1978, among all full-time and regular part-time kitchen and dining room employees employed by DAKA at its facility at IH. (The parties stipulated at the hearing in the instant case that the unit as so described is appropriate for purposes of collective bargaining; DAKA and IH of course assert that residents must be excluded from that unit whereas the General Counsel and the Union assert that the residents were always properly included in that unit description.) The agreement in Case 2-RC-18100 did not specifically refer to the residents. There was no document offered in evidence directly stating that DAKA and the Union had, in 1978, agreed to include the residents in that unit. Nevertheless, the uncontroverted testimony establishes that the Union gave in to DAKA's insistence then that the residents must participate in the election and the list of the names and addresses of the eligible voters, furnished by DAKA, discloses that 10 residents were identified by DAKA thereon.

At the election held on October 26, 1978, a majority of the votes cast were for representation by the Union. The tally of ballots was not placed in evidence. On November 3, 1978, the Union was certified as the exclusive representative of the unit employees for purposes of collective bargaining with DAKA.

5. The negotiations between the Union and DAKA

After the Union was certified and prior to the start of the negotiations, DAKA and IH met to consider their respective views. DAKA's vice president of personnel, Allen Maxwell, testified that IH's president, Olson, made it clear to him that the residents could not be included in any group of cafeteria employees covered by a collective-bargaining agreement. Olson did not deny this. Both Maxwell and Olson testified, in essence, that IH informed DAKA, before it began negotiations with the Union, that IH was amenable to paying DAKA up to a 7-percent increase in its labor budget to cover the cost of wage rate raises and additional benefits that may be secured for the cafeteria employees as a result of those negotiations. Maxwell further testified that Olson had asked to be kept abreast of all developments in the negotiations and that Olson had also indicated to him that it would be to IH's advantage for DAKA to delay any strike action by the Union until the summer when there are fewer graduate students in residence. In his prehearing affidavit, Maxwell stated that Olson directly urged him to stall the negotiations until the end of the academic year.

[2] In its brief, IH stated that Olson was unwittingly pulled into the horsetrading that occurs when parties are discussing a unit issue. As that comment bears on motive, one of the material issues in this case, it is incumbent on me to accept or reject that comment. I reject it. Olson is a highly perceptive individual and has to be conscious of one of IH's express goals which, as it has stated, is "to provide the broadest opportunities to foreign students to experience the many facets of American life and give them a deeper understanding of the United States." I can think of no more significant way for a foreign student to experience a facet of life in this country than to participate in a secret-ballot election conducted under American laws. Olson may not have consciously taken that consideration into account when he agreed that the residents should be included in the unit then, but he certainly did not make that judgment indifferently. I note also, in that regard, that IH had a lawyer present for 2 days of hearing then where the principal concern was whether those residents should vote. Olson did not act unwittingly but acted with deliberation.

In December 1978, the Union served its bargaining demands on DAKA; it did not serve any on IH nor did it ask to meet with IH.

The principal negotiator for DAKA was Maxwell; the principal one for the Union was one of its vice presidents, Telbert King. King testified that, at the first session in December 1978, Maxwell told him that IH had instructed him that under no circumstances were the residents to be included in the cafeteria unit and that DAKA could not go beyond 7 percent of its labor budget in the negotiations. King testified that he told Maxwell that he did not understand the reversal in position—referring to the fact that, during the representation case hearing, DAKA had fought to include the residents in the unit with the "blessing" of Olson. King testified that he told Maxwell that he did not think that the Union could legally negotiate the residents out of the unit after they had voted in the election. Maxwell testified but did not deny making the statements that King attributed to him. Maxwell stated that IH had not limited DAKA to a 7-percent increment in labor costs, although he did tell King that it had. Maxwell explained that DAKA could agree to pay more but he chose at the outset to put the onus on IH as a bargaining ploy. Maxwell did not testify that IH had given him any leeway respecting the unit placement of the residents; his testimony in essence corroborates King's that IH was adamant that the residents were not to be included in the unit, notwithstanding the fact that they had voted in the election. At the first negotiating session, Maxwell informed King that DAKA would review the Union's demands and get back to it. Upon the conclusion of the session, Maxwell informed Olson as to what had transpired at it.

Maxwell and King met again in January 1979 and agreed then to place the matter of the unit placement of the residents on the "back burner." They discussed the economic and the noneconomic terms of a contract at meetings held between January and May 1979. At the end of those meetings, Olson was advised of all significant developments. By late May, they had reached agreement on all such terms and attempted to resolve the issue of the residents' unit placement by discussing formulas applicable to part-time employees, apparently, in an effort to devise a basis whereby the residents might be excluded as casual employees while those nonresidents who worked on a part-time basis would be included as regular employees. Their efforts were not successful as it appears that some of the residents worked on a regular basis. King asked Maxwell if DAKA had any objection to the Union's meeting directly with Olson to discuss the unit placement of the residents. Maxwell had none and arrangements for such a meeting were made.

On June 4, Olson and an attorney for IH, Albert R. Galik, went to the Union's office where they met with Telbert King and with Rubin Fort,[3] an organizer for the Union. King testified that, at that meeting, he told Olson and Galik that Maxwell had taken the position throughout the contract negotiations that IH had issued instructions to DAKA that the residents could not be included in the unit. King testified also that he told Olson and Galik that it was not fair for IH to take that position as Olson had been present at the second day of the representation case hearing when the Union withdrew its objections to DAKA's efforts to include the residents in the unit. King testified that Galik responded to his remarks by saying that IH does not want the residents in the unit because they are not employees "in the context of the Board," because they are not on DAKA's payroll; because they have a special arrangement because of their status; because they do not have work permits; and because, when they work in the cafeteria, "there's no money subtracted from their board—however it is that they work it out." (The last quote obviously is a reference to the system whereby credit is given toward a resident's room rental and his food plan costs for the value of the hours he has worked in the cafeteria.) King testified that Galik raised the possibility of resolving the matter via a unit clarification petition with the Board or via arbitration and, on the hope that DAKA and the Union may be able to reach an agreement as to such an approach, the meeting ended, according to King. Fort, the union organizer, was not present at the hearing, and thus did not testify.

Olson gave the following testimony as to that meeting. He said that the Union wanted to meet with him to understand how IH's work aid program functioned, i.e.—how the residents are referred to work by IH in the cafeteria and how they receive credits for the hours they work there. At the meeting itself, IH's attorney Galik began the discussion by stating that he was there with Olson solely to answer the Union's questions about the work aid program. King agreed and then told Galik that the Union was having a problem in negotiating with DAKA about the students who were working in the cafeteria and that the problem seems to have boiled down to a question as to how to calculate the number of hours they could work. At some point in the conversation, Galik asked the Union why it did not go to the Board to obtain a clarification of the unit. King, in response, said that one of the problems is that the Union had agreed to have the residents take part in the election and that the Union may be accused of not properly representing them if they were not included in the contract. Olson continued his account by saying that King also said something to the effect that the Union may have to go to the Labor Board, and that Galik told him that that decision was up to him. Olson was asked at the hearing if it was not correct that, at that meeting, IH was not willing to have the residents included in the unit. Olson did not answer that question. Instead he first asked what did counsel for the General Counsel mean when he asked that question; Olson next stated that IH had nothing to do with whether the students were included or were excluded. Galik, one of IH's attorneys at the hearing, did not testify.

There is really no credibility issue to resolve because Olson did not deny that King had related what Maxwell had stated was IH's position as to the unit placement of the residents or that Galik had then stated the reasons

[3] Fort signed the agreement for consent election in Case 2-RC-18100, discussed above. Counsel for the General Counsel stated that Fort is no longer in the Union's employ.

why IH took that position. By inference, however, Olson may have contested the veracity of King's account as Olson observed, in a conclusionary way, that IH had nothing to do with the unit placement of the residents. In any event, I have to credit or discredit King's account, regardless of whether it is controverted as the General Counsel proffered that testimony. I credit King's account. I note that, during his cross-examination, King was asked in a complex manner about that meeting, and he clarified the question and responded to it by testifying substantially the same as he had during his direct examination. Further, King's account is consistent with Maxwell's testimony as to the reason why the Union sought out a meeting with IH and with the undisputed testimony respecting the position taken by IH, at the outset of the bargaining, respecting the exclusion of the residents from the unit. I also note that Galik did not challenge King's account.

On June 6, the representatives of the Union and DAKA met. The testimony of their respective vice presidents, King and Maxwell, establishes that they had then reached complete accord on all terms and conditions of a 2-year collective-bargaining agreement for a unit of all full-time and regular part-time kitchen and dining room employees employed by DAKA at the IH cafeteria. They also had reached an understanding that the unit placement of the residents would be arbitrated. King testified that, in later communications between the Union's attorney with DAKA's attorney, some confusion existed as to whether the contract would include language pertaining to the agreement to arbitrate. It appears that while those attorneys were pursuing that matter, IH was considering the matter of terminating DAKA's contract to manage its cafeteria, as discussed below.

6. The termination of DAKA's contract by IH

The testimony of IH's president, Olson, indicates that in early 1979, when food costs were increasing because of inflation, DAKA's explanations as to how the increases were calculated by it were not satisfactory. IH ultimately is responsible for those costs. Olson testified further that he was not satisfied either with DAKA's menus as he felt that they should include more ethnic dishes. No evidence was submitted that DAKA was directly made aware of these areas of dissatisfaction. Olson also testified that DAKA seemed unable to keep obvious costs down; and in that regard referred to DAKA's practice of charging the same price for a cup of coffee as it did for a container of coffee; and to the fact that the residents usually selected the container as it contained more coffee and to the further fact that DAKA incurred extra expenses in buying the containers whereas the cups would only have to be washed. Olson said, as a result of that one item alone, IH paid DAKA for more coffee and more containers. Olson testified that he was also dissatisfied with the fact that, during the summertime, DAKA's costs were not underwritten by IH and that DAKA operated on a profit basis, which resulted in its tripling its prices compared to those charged during the academic year. Olson explained that this was a big problem as more and more students were in residence at IH each summer.

Based on these areas with which he was dissatisfied, Olson testified he undertook a feasibility study as to whether to terminate DAKA's contract and then advised the IH board of trustees in June 1979 that he would terminate DAKA's contract if he was dissatisfied with its budget for the academic year 1979–80. No documentary evidence was proffered to corroborate that such a study was done or that Olson had so met with his board of trustees.

On July 23, 1979, Olson met with DAKA's president, Terry Vince, to review Daka's proposed budget for the cafeteria operations in the 1979–80 academic year. DAKA's president, Vince, testified that when he finished presenting the budget to Olson, Olson paused and asked him how he would feel if IH did not renew its contract with DAKA; DAKA's president said he told Olson he was "frankly relieved." Vince asked why IH was not renewing the contract and Olson told him that IH "could do it cheaper," and that it was not the quality or service. Vince testified that Olson told him then that IH would only keep one DAKA employee. Olson, in testifying did not deny this; he testified that he never told Vince that IH did not want to hire any of DAKA's employees. If there is a conflict in their accounts, I credit Vince's. In that regard, as noted below, IH in fact hired only one of DAKA's employees to start the IH operation.

Later that day, July 23, Olson sent DAKA a letter giving it notice under the cafeteria contract that DAKA's services were to be terminated on August 23. At about this same time, late July, DAKA gave the Union notice that IH had canceled its contract with DAKA, effective late August.

7. The requests to sign the collective-bargaining agreement

Shortly after the Union was informed that DAKA's contract was canceled, the Union demanded that DAKA sign a collective-bargaining agreement containing the terms previously agreed on, as discussed above. DAKA's vice president, Maxwell, testified that he told the Union's executive vice president that DAKA would not sign any agreement for the IH cafeteria unit.

The Union never sent a written contract[4] to DAKA to sign; it never asked IH to sign any collective-bargaining agreement, nor did it send any to IH.

8. The takeover of the cafeteria by IH

On August 23, 1979, DAKA's contract with IH expired. IH hired only one of the DAKA employees. DAKA offered employment to the others at its other locations, and some accepted.

[4] A contract was received in evidence at the hearing after the Union's vice president, Telbert King, identified it as the one drawn up by the Union's contract department from bargaining votes he had furnished to that department. Many of the clauses are set out on forms. Although the contract in evidence refers to an annexed stipulation containing the agreed-upon wage rates, no stipulation was appended. Also, the testimony indicated that the form of the union-security clause would have to be changed because the contract was retroactive to January 1, 1980, to allow for the requisite 30-day grace period.

IH spent about $15,000 to paint and otherwise refurbish the cafeteria. It closed down the cafeteria on August 23 for a 2-week period for this purpose. IH has operated the cafeteria since then. No documentary evidence was proffered respecting the statement Olson had made to DAKA's president in July that IH could operate the cafeteria "cheaper" than DAKA did. Olson testified that IH does not triple cafeteria prices in the summertime. Apparently, this is so because it operates on a nonprofit basis whereas DAKA's operations in the summer had not been subsidized. Also, Olson testified that IH did not reduce prices substantially but did put into effect selective price reductions. He also testified that IH has been able to keep those reduced prices in effect on a year-round basis, unlike the system followed under the arrangement it had with DAKA, when prices increased threefold during the summer months.

At some point shortly after IH took over the management of its cafeteria, it hired two nonresidents who had once been in DAKA's employ there. The parties stipulated that one individual who had been employed by IH from 1952–64 (the last 7 of those years in its cafeteria) and who has been employed in the cafeteria there from 1964–79 by catering firms under contract to IH, including of course DAKA, was not offered employment by IH in August 1979.

B. *Analysis*

1. Whether residents are employees as defined in the Act

IH's attorney had taken the position, when meeting with the Union on June 4, 1979, that residents were not employees within the context of the Act. It may be that he was alluding them solely to the fact that most of the residents were in this country on student visas and apparently are not required by the Immigration and Naturalization Service to obtain work permits while working in the IH cafeteria to earn credits to offset the costs of their room and board. In the brief it filed, IH makes clear now that it does not in any way rely on the status of any resident as aliens with respect to its defense in this case. Still, it has not conceded that these "student workers," as it terms them, are employees entitled to the protection of the Act.

The record is clear that the residents, when working in the cafeteria at IH in 1978–79, were supervised by the same persons in DAKA's employ as were the nonresidents on DAKA's payroll and that they performed substantially the same work. Further, it appears that the residents worked with regularity in the cafeteria, as DAKA and the Union had failed, despite repeated efforts, to establish a formula for regular part-time employees, which would exclude the residents while including the nonresident part-time employees.

The case law is clear that an individual who works in a capacity unrelated to his studies is an employee as defined in the Act.[5] The unit placement of such an employee, *vis-a-vis* non-student employees, is another matter to be considered,[6] as is the joint-employer issue. As there is no contention that the work performed by the residents under DAKA's supervision in the IH cafeteria in 1978–79 had any relationship, other than incidental in nature, to the educational programs those residents were pursuing in their graduate studies or to the cultural programs offered at IH itself and in view of the duties they performed for DAKA, I find that the residents working in the cafeteria then were employees as defined in the Act.

2. The joint-employer issue

The Board has noted that it looks to four principal factors in determining whether two arguably separate employers will be treated as a joint employer, these factors are: (1) interrelation of operations, (2) centralized control of labor relations, (3) common management, and (4) common ownership or financial control; and that, while no individual factor is controlling, emphasis is placed on the first three factors, particularly centralized control of labor relations.[7]

As to the first factor, it is obvious that the operation of the cafeteria by DAKA was being done in furtherance of one of the basic reasons for IH's existence, i.e.—to provide reasonably priced food to foreign graduate students in a place where they would enjoy the companionship of other graduate students, including U.S. citizens. The physical location of the cafeteria itself, i.e.—inside the IH building, accentuates that purpose. The fact that the equipment (refrigeration, cleaning, lighting, tableware) was owned and furnished by IH also demonstrates that the operations of DAKA and IH were then inextricably intertwined.

Respecting the element of common management, the record in this case discloses that IH did not simply write out checks at regular intervals in payment of the services rendered by DAKA. Instead, DAKA operated on a cost reimbursement basis. IH reviewed DAKA's budget in great detail and required DAKA to explain the basis for cost overruns. IH approved the menus, prices, hours, service and schedules of food service, and screened applicants for the position of manager for DAKA of the cafeteria.

As to control of labor relations, there are the following considerations. IH made the decision, whenever there was a job vacancy in the cafeteria, as to whether DAKA would hire a resident or a nonresident; IH set the wage rates of the residents and referred those residents to DAKA for employment; IH required DAKA to terminate the employment of a resident when the resident had earned credits equal in value to the cost of his room and board; IH approved DAKA's strategy in the representation case to press for the inclusion of the residents in the unit of eligible voters; IH directed DAKA to refrain from negotiating with the Union respecting those residents, after the Union won the election, and DAKA complied fully with that directive; IH met with

[5] *System Auto Park & Garages, Inc.*, 248 NLRB 948 (1980); *Children's Hospital of Pittsburgh*, 222 NLRB 588 (1976); *Dorance J. Benzschawel and Terence D. Swingen Co-Partners d/b/a Parkwood IGA Foodliner*, 210 NLRB 349 (1974). Cf. *Cornell University*, 202 NLRB 290 (1973).

[6] Compare *Pawating Hospital Association*, 222 NLRB 672 (1976), with *Parkwood IGA Foodliner, supra.*

[7] *L. E. Davis, d/b/a Holiday Inn of Benton*, 237 NLRB 1042, 1044 (1978), and cases cited therein.

the Union to explain the reasons for that directive; and throughout the negotiations IH and DAKA reviewed, in detail, all the strategy for bargaining.

There is no evidence that IH has any proprietary interest in DAKA.

I conclude that in 1978–79 the DAKA cafeteria operations at IH were part of an integrated enterprise being offered by IH to graduate students on a nonprofit basis as IH exercised substantial control over significant elements of DAKA's labor relations policies, as the DAKA operations were so closely integrated with IH's facilities purposes and functions, and as there was evidence also that IH possessed managerial authority over the operating budget of DAKA and in other significant areas, including the menu for each day. On those premises, IH and DAKA were a joint employer for purposes of the Act.[8]

3. The reason for IH's cancellation of its contract with DAKA

The General Counsel contends that IH terminated DAKA's management contract to avoid having to deal with the Union and because the cafeteria employees had selected the Union as their bargaining representative. IH asserts that its decision to end its relationship with DAKA was based solely on economic considerations.

There is no question but that IH had sought to keep the Union out of the cafeteria and, having failed in that regard, that it prevented DAKA from negotiating a contract with the Union for all the unit employees. IH itself had sought in June 1979 to persuade the Union to agree to exclude the residents from the contractual unit, but again its effort failed. All indications, then, were that IH would have to look forward to litigating the issue and, incidentally, having testimony presented respecting the abrupt reversal of its position as to the inclusion of the residents in the unit. It was about this same time, according to IH's president, he advised the IH board of trustees that he intended to cancel DAKA's contract if he was not satisfied with its proposed budget for 1979–80. I note also that Maxwell, DAKA's vice president, and Olson, IH's president had for the preceding 6 months consulted closely with each other respecting the bargaining developments and that they discussed any matter deemed significant involving the operation of the cafeteria. Maxwell offered no testimony that Olson had at any time expressed dissatisfaction with the way in which DAKA had operated the cafeteria or that Olson had discussed with him ways in which the cafeteria could be operated more efficiently. I note also that DAKA's president testified that he had been surprised to learn, right after he completed his detailed presentation of the 1979–80 budget, that DAKA's contract would be canceled; that he was told then by Olson that IH could operate the cafeteria "cheaper"; and that IH would employ only one of DAKA's employees. Olson testified that he did not recall that DAKA's president presented the proposed budget and that he, Olson, announced his decision then to terminate DAKA's contract. I note also that Olson testified that IH did not reduce substantially the cost of operating the cafeteria but that it had introduced selective price reductions, e.g., yogurt, tea, and some other items. No documentary evidence was offered to corroborate Olson's statement to DAKA's president that IH could operate the cafeteria for less money. Olson said he had made studies; records of none of those studies were submitted in evidence. For that matter, there was no offer by IH of the minutes of the IH board of trustees meeting in June at which, according to Olson, he advised the board of his decision to terminate DAKA's contract. There was no documentation or explanation as to why Olson had advised DAKA's president that IH would employ only one of the unit employees of DAKA.

In view of the adamant position of IH that the Union surrender its right to represent the residents employed in the cafeteria, the Union's refusal to accommodate IH thereon, the failure of IH to establish that it could operate the cafeteria "cheaper" than DAKA can; the concession by IH that it does not claim that it has reduced the cafeteria operating costs in any substantial manner although it had summarily rejected Daka's detailed budget proposals purportedly for that reason, and the unexplained decision of IH to hire only one of the unit employees—all of these considerations warrant a strong inference that IH's decision to terminate DAKA's contract was based on the Union's refusal to give in to IH's insistence that it disclaim the right to represent the residents who worked in the cafeteria. In that regard, the Board has observed that an employer's method of hiring employees for a restaurant it took over from a company which had a contract with a union can give rise to an inference that its real reason for not hiring the employees covered by that union contract was their union affiliation.[9] The unexplained hiring of only one unit employee by IH indicates to me that it did not want to inherit DAKA's bargaining obligation by offering employment to experienced workers who were apparently performing most satisfactorily. As the General Counsel has, in my judgment, established a *prima facie* case, IH had the burden of showing that it would have terminated DAKA's contract for economic reasons, regardless.[10]

In its brief, IH urges that it has met this burden. In that regard, it observes that IH has a contract with another union, the National Organization of Industrial Trade Unions, covering IH housekeepers and its other employees. I note that that contract excludes residents from its coverage. IH also relies on the record testimony that it has hired "some" former DAKA employees to rebut the inference that its action was discriminatorily motivated. I believe that none of those considerations establishes that IH would have terminated DAKA's contract anyway. Those considerations bear upon my previous determination that the General Counsel has made out a *prima facie* case of discriminatory motivation and I do not see that they require me to reverse that finding. I

[8] *Kenner Products Division, CPG Products Corporation, and Jeannine Robbins, d/b/a Schnabel's Drivers for Lease*, 249 NLRB 1164 (1980); *Philip David Sachs and Michael Sachs, A Partnership, d/b/a Phil's Sav-Mart Service; Peko Ltd; Sav-Co, Inc., d/b/a Sav-Mart*, 199 NLRB 835 (1972).

[9] *Karl Kallmann d/b/a Love's Barbeque Restaurant No. 62; Love's Enterprises, Inc.*, 245 NLRB 78 (1979).

[10] *Wright Line, a Division of Wright Line, Inc.*, 251 NLRB 1083 (1980).

have noted that IH advised DAKA that, upon taking over the cafeteria, it intended to hire but one of the unit employees then on DAKA's payroll. In fact, IH did hire only one then. I note also that one of the remainder it did not hire was a man who first began work at IH in 1952, who worked directly for IH from 1957–68 in the cafeteria, and who continued to work there until 1979, under various institutional operators, including DAKA. The record testimony does establish that IH has since hired two former DAKA employees, but it appears that they were not on DAKA's payroll at the time IH took over the cafeteria operations and also that they were hired by IH at some point after IH had hired the initial employee complement.

I find that IH has not shown that it canceled the DAKA contract for economic reasons. Thus, I conclude that IH canceled that contract because the Union did not abandon the residents employed in the cafeteria.

4. Alleged refusal to bargain collectively

The pleadings, as amended at the hearing, form three issues for resolution which pertain to alleged refusals of DAKA and IH to bargain collectively. First, it is contended by the General Counsel that the insistence that the Union exclude the residents constituted an unlawful refusal to bargain. Secondly, it is contended that a contract was in fact negotiated and that both DAKA and IH have unlawfully refused to sign it. Thirdly, it is asserted that IH unlawfully failed to give the Union a meaningful opportunity to bargain respecting the decision to cancel DAKA's contract.

Some of the defenses raised by IH to these contentions have already been disposed of. Thus, IH's assertions that the residents are not employees under the Act and that it is not a joint employer with DAKA have been found to lack merit. IH, however, also contends that it had no bargaining obligation to the Union as it, IH, was not a party to the representation proceeding, that it had no obligation to sign any contract with the Union as the Union never asked it to sign one and as the evidence fails to demonstrate that agreement had been reached as to all the terms of a contract for the cafeteria employees, and that IH was not required to discuss the feasibility of canceling DAKA's contract as IH had assumed a new business venture.

The Board has held that a joint employer has an obligation to bargain with a union which was certified to represent the employees employed by the joint venture, notwithstanding that that joint employer was not a party to the underlying representation proceeding.[11] On that basis, I must reject IH's first defense. Moreover, IH did enter an appearance in Case 2-RC-18100 and its president, as discussed above, approved the contention urged by DAKA then as to the unit placement of the residents then. To hold now that IH can still rely on the fact that no formal amendment was ever made to add its name as a joint employer in that representation proceeding would emphasize form over substance. I find that IH and DAKA refused to bargain collectively with the Union by insisting that there could be no negotiations for the residents employed in the cafeteria. As DAKA had agreed, with the "blessing" of IH to include the residents in the unit and as no policy of the Act was contravened thereby,[12] the residents were properly in the unit for which the Union was certified.

I find merit in IH's contention that it did not refuse to sign a contract with the Union as the evidence is clear that it was never asked to do so. I find also that there was no agreement reached respecting the unit employees as DAKA and the Union had agreed to withhold negotiating, as to the special concerns of the residents, until IH withdrew its objections to the inclusion of the residents in the overall unit. Further and as noted earlier, the agreement, prepared by the Union's contract department based on the notes of its vice president who handled the negotiations with DAKA, contains a union-security clause admittedly invalid on its face. The General Counsel asserts that that clause must be corrected. It is the Board's function in appropriate cases to order parties to cease giving effect to such a clause but the Board does not insist that parties substitute a valid clause. The latter matter is one reserved for further bargaining. For all the foregoing reasons, IH did not unlawfully refuse a request by the Union to sign that contract. For most of those same reasons, DAKA too did not unlawfully refuse such request; in DAKA's case, I note that the Union did ask it to sign and DAKA refused. Such refusal was not unlawful as no agreement was reached on the employment terms and conditions for the residents and in view of the fact that further negotiations were needed to correct the language of the union-security clause.

The last bargaining issue involves the allegation that IH had a duty to bargain as to its decision to terminate DAKA's contract and unlawfully failed to do so. If its decision were based on economic considerations, I would agree, as *Mobil Oil* teaches. I have found, however, that IH's decision was based upon unlawful discriminatory motives. I also note that there was no probative evidence to indicate that IH acted because of any economic consideration. It would clearly be contrary to the policies of the Act were I to suggest to IH, much less require, that it bargain respecting a decision to cancel a contract for unlawful reasons. In any event, the record testimony discloses that the Union had been notified in July 1979 that DAKA's contract was to end in a month and it never requested bargaining. In those circumstances, and assuming *arguendo*, that the decision was economically motivated, it is obvious that the Union's failure to exercise its right to demand bargaining would have been fatal to its claim that there was an unlawful refusal.[13]

CONCLUSIONS OF LAW

1. Respondent IH and Respondent DAKA are employers engaged in commerce and in operations affecting commerce within the meaning of Section 2(2), (6), and (7) of the Act.

2. The Union is a labor organization as defined in Section 2(5) of the Act.

[11] *Mobil Oil Corporation*, 219 NLRB 511 (1975).

[12] *The Tribune Company*, 190 NLRB 398 (1971).

[13] *Citizens National Bank of Wilmar*, 245 NLRB 389 (1979).

3. The employees in the bargaining unit described in the certification of representative in Case 2-RC-18100 constitute a unit appropriate for collective bargaining within the meaning of Section 9(b) of the Act; and the residents of Respondent IH who work in its cafeteria on a full-time or regular part-time basis are properly part of that unit, and are employees as defined in the Act.

4. Respondent IH and Respondent DAKA are the joint employers of the employees in that unit.

5. The Union at all times material herein has been the exclusive collective-bargaining representative of the employees in that unit within the meaning of Section 9(a) of the Act.

6. By terminating its contract with Respondent DAKA because the Union would not agree to a modification of the composition of the certified unit so as to exclude residents of Respondent IH and because the employees in that unit had selected the Union as their collective-bargaining representative, Respondent IH has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(3) and (1) of the Act.

7. By having insisted that the Union surrender its right and forgo its duty to represent the residents who were properly included in the above unit and by having refused to bargain as to their terms and conditions of employment, Respondent IH and Respondent DAKA have engaged in, and are engaging in, unfair labor practices within the meaning of Section 8(a)(5) and (1) of the Act.

8. The aforesaid unfair labor practices affect commerce within the meaning of Section 2(6) and (7) of the Act.

9. Respondent IH and Respondent DAKA did not violate the Act by failing to execute a collective-bargaining agreement with the Union or by not having bargained with it respecting the cancellation of Respondent DAKA's contract with Respondent IH.

THE REMEDY

Having found that Respondent IH discriminatorily terminated its contract with Respondent DAKA, I shall order that the employment status of the unit employees then be restored to what it would have been but for the discrimination against them, and that Respondent IH offer them immediate and full reinstatement to their former jobs, or, if those jobs no longer exist, to substantially equivalent positions, without prejudice to their seniority or other rights and privileges previously enjoyed, discharging, if necessary, employees hired as their replacements and make them whole for any loss of earnings that they may have suffered due to the discrimination practiced against them, as prescribed in *F. W. Woolworth Company*, 90 NLRB 289 (1950), with interest thereon to be computed in the manner prescribed in *Florida Steel Corporation*, 231 NLRB 651 (1977).[14]

Further, I shall order that Respondent IH bargain collectively with the Union, upon request, concerning all terms and conditions of employment of all the employees, including residents, employed in the certified unit. In addition, I shall order that Respondent IH cancel, upon request by the Union, changes in rates of pay and benefits unilaterally effectuated and make the employees whole by remitting all wages and benefits that would have been paid absent Respondent IH's unlawful conduct as found herein from August 23, 1979, and until Respondent IH negotiates in good faith with the Union to agreement or to impasse.[15]

As no purpose of the Act would be effectuated by requiring that Respondent DAKA be reinstated to manage the IH cafeteria, I shall not recommend such action towards restoring as far as practicable the *status quo ante.*

Upon the foregoing findings of fact, conclusions of law, and the entire record, and pursuant to Section 10(c) of the Act, I hereby issue the following recommended:

ORDER[16]

A. The Respondent, International House, New York, New York, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Insisting to the Union that it agree to exclude residents of International House from inclusion in the unit, as described below, while working there on a full-time or regular part-time basis.

(b) Canceling its contract with any catering firm to bring about the termination of employment of cafeteria employees or otherwise to discharge cafeteria employees because the Union refuses to exclude such residents from contract negotiations or because the cafeteria employees have selected the Union as their collective-bargaining representative.

(c) Refusing to bargain collectively with the Union as the exclusive representative of, *inter alia*, residents of International House employed as full-time or regular part-time kitchen and dining room employees at International House.

(d) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them under Section 7 of the Act.

2. Take the following affirmative action which will effectuate the purposes of the Act:

(a) Offer immediate and full reinstatement to all full-time and regular part-time employees employed as dining room and kitchen employees at International House on or about August 23, 1979, to their former jobs, or, if those jobs no longer exist, to substantially equivalent positions, without prejudice to their seniority and other rights and privileges previously enjoyed, discharging, if necessary, employees hired as their replacements and make them whole for any loss of earnings they may have suffered as a result of the discrimination against them, in the manner set forth in the section of this Decision entitled "The Remedy."

[14] See, generally, *Isis Plumbing & Heating Co.*, 138 NLRB 716 (1962). Backpay is to be based on either the rate structure prevailing under DAKA or the new rate structure established by IH, whichever results in the higher backpay to the individual employees. In this regard, see *Karl Karlmann, supra.*

[15] The remission of wages is to be applied consistently with the make-whole remedy set forth above with respect to the discriminatees.

[16] In the event no exceptions are filed as provided by Sec. 102.46 of the Rules and Regulations of the National Labor Relations Board, the findings, conclusions, and recommended Order herein shall, as provided in Sec. 102.48 of the Rules and Regulations, be adopted by the Board and become its findings, conclusions, and Order, and all objections thereto shall be deemed waived for all purposes.

(b) Upon request, bargain with the above Union as the exclusive representative of all the employees in the above unit concerning terms and conditions of employment and, if an understanding is reached, embody it in a signed contract if asked to do so.

(c) Upon request of the above Union, cancel any changes from the rates of pay and benefits that existed immediately before the takeover by International House of DAKA's contract to manage the cafeteria, and make the employees whole by remitting all wages and benefits that would have been paid absent such changes from August 23, 1979, until it negotiates in good faith with the Union to agreement or to impasse, in the manner set forth in the section of this Decision entitled "The Remedy."

(d) Preserve and, upon request, make available to the Board or its agents, for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to analyze the amount of backpay due under the terms of this Order and to enable Respondent DAKA to mail notices as provided for below.

(e) Post at its New York facility copies of the attached notice marked "Appendix A."[17] Copies of the notice, on forms provided by the Regional Director for Region 2, after being duly signed by Respondent IH's authorized representative, shall be posted by it immediately upon receipt thereof, and be maintained by it for 60 consecutive days thereafter, in conspicuous places, including all places where notices to employees and residents are customarily posted. Reasonable steps shall be taken by Respondent IH to insure that said notices are not altered, defaced, or covered by any other material.

(f) Notify the Regional Director for Region 2, in writing, within 20 days from the date of this Order, what steps Respondent IH has taken to comply herewith.

B. The Respondent, Dining and Kitchen Administration, d/b/a DAKA, New York, New York, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Insisting to the Union that it agree to exclude residents of International House from inclusion in the unit for which it was certified in Case 2-RC-18100 while they are working in said unit on a full-time or regular part-time basis.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them in Section 7 of the Act.

2. Take the following affirmative action which will effectuate the purposes of the Act:

(a) Mail to each of its employees employed on August 23, 1979, in the unit found appropriate in Case 2-RC-18100, including those who resided at International House, a copy of the notice annexed as "Appendix B."[18] Copies of the notice, on forms to be provided by the Regional Director for Region 2, after being duly signed by Respondent DAKA's authorized representative, shall be so mailed by it via certified mail, immediately upon receipt thereof, to the respective home addresses of those employees.

(b) Mail to the Union a signed copy of that notice.

(c) Notify the Regional Director for Region 2, in writing, within 20 days from the date of this Order, what steps Respondent DAKA has taken to comply herewith.

IT IS FURTHER ORDERED that the allegations in the complaint that Respondents International House and DAKA unlawfully failed to honor the Union's request to sign an agreed-upon contract or to afford the Union a reasonable opportunity to bargain collectively respecting an economic basis for the cancellation of Respondent DAKA's contract with Respondent IH be, and they are, dismissed.

APPENDIX B

NOTICE TO EMPLOYEES
MAILED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Act, as amended, gives all employees the following rights:

To organize themselves
To form, join, or support unions
To bargain as a group through a representative of their choice
To act together for collective bargaining or other mutual aid or protection
To refrain from any or all such activities, except to the extent that the employees' bargaining representative and employer have a collective-bargaining agreement which imposes a lawful requirement that employees become union members.

In recognition of these rights, we hereby notify our employees that:

WE WILL NOT refuse to bargain collectively with District 1199, National Union of Hospital and Health Care Employees, a/w Retail, Wholesale, Department Store Union, AFL-CIO, as the exclusive representative of all full-time and regular part-time kitchen and dining room employees, including residents of International House, employed in the cafeteria at International House, by failing and refusing to negotiate with it respecting the terms and conditions of employment of those residents.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce employees in the exercise of the rights guaranteed them in Section 7 of the Act.

DINING AND KITCHEN ADMINISTRATION,
D/B/A DAKA

[17] In the event that this Order is enforced by a Judgment of a United States Court of Appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

[18] The provisions of fn. 17 shall also apply to this notice.